

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE UNITED STATES TRUSTEE  
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UNITED STATES TRUSTEE, REGION 3  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

	:	
In re:	:	
	:	Chapter 11
Jazz Photo Corp, Inc.	:	Case No. 03 - 26565 (MS)
	:	
	:	
Debtor(s)	:	Hearing Date: To be determined
	:	

**ORAL ARGUMENT REQUESTED**

**NOTICE MOTION FOR AN ORDER DIRECTING THE APPOINTMENT  
OF AN EXAMINER.**

**PLEASE TAKE NOTICE** that the United States Trustee will move before the Honorable Morris Stern as soon as counsel may be heard, at the United States Bankruptcy Court, 50 Walnut Street, Newark, NJ 07102, for an Order Directing the Appointment of an Examiner and for such other and further relief as this Court deems just and appropriate.

**PLEASE TAKE FURTHER NOTICE** that United States Trustee will rely upon the Memorandum of Law submitted herewith at the hearing and reserves her right to supplement these materials at the hearing..

**PLEASE TAKE FURTHER NOTICE** that pursuant to District of New Jersey Local

Bankruptcy Rule 9013-1(f) oral argument is requested.

ROBERTA A. DeANGELIS  
ACTING UNITED STATES TRUSTEE  
REGION 3

\_\_\_\_\_/s\_\_\_\_\_  
Margaret Lambe Jurow  
Trial Attorney

DATED: Newark, New Jersey  
February 5, 2005

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**MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES  
TRUSTEE'S FOR AN ORDER DIRECTING THE APPOINTMENT OF AN  
EXAMINER**

THE UNITED STATES TRUSTEE, by and through counsel, in furtherance of her duties and responsibilities under 28 U.S.C. § 586(a)(3) and (5), hereby respectfully requests that the Court enter an Order Directing the Appointment of an Examiner pursuant to 11 U.S.C. §1104(c).

1. Jazz Photo Inc. and its president, Jack Benun, filed for bankruptcy protection in the summer of 2003 on the heels of the entry of a judgment in the amount of more than \$30.0 million in favor of Fuji Photo, Inc. The District Court Judgment has recently been affirmed on appeal.

2. Jazz's largest asset is its litigation against Imation commenced in 1999 for fraud and Civil RICO in connection with Imation's supplying Jazz with defective film and other tortuous acts which resulted in lost profits estimated by Jazz' expert at \$41 million which would be trebled under certain of the legal theories in the case. A jury trial started in District Court before the Honorable Jose Linares approximately two weeks ago. Recently Judge Linares has engaged in efforts to bring the parties to an amicable resolution. These efforts have revealed a substantial difference of opinion among the bankruptcy parties.

3. The United States Trustee submits that the appointment of an independent examiner owing a fiduciary duty to the estate would be in the best interest of the estate. The United States Trustee proposes that the scope of the examiner's duties be limited to an evaluation of the litigation and the rendering of an opinion as to the value of a reasonable settlement.

4. 11 U.S.C. §1104(c) permits this Court to direct the appointment of an examiner if "such appointment is in the interests of the creditors, any equity security holders and other interests of the estate."

5. Given the nature of the settlement discussions and the potential structure of any settlement and the effect that a settlement might have on the various classes represented in this case, the United States Trustee submits that the appointment of an examiner owing a fiduciary duty to the estate as opposed to a single class of creditors is warranted and should be so ordered.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the United States Trustee respectfully requests that this Court enter an Order directing the Appointment of an Examiner and such other and further relief that is deemed just and equitable.

Respectfully submitted,

KELLY BEUADIN STAPLETON  
UNITED STATES TRUSTEE  
REGION 3

\_\_\_\_\_/s\_\_\_\_\_  
Margaret Lambe Jurow  
Trial Attorney

DATED: February 4, 2005